



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,866	08/10/2006	Gyorgy Miklos	P18764-US1	7295
27045	7590	07/08/2009		
ERICSSON INC. 6300 LEGACY DRIVE M/S EVR 1-C-11 PLANO, TX 75024				
EXAMINER				
WOO, KUO-KONG				
ART UNIT		PAPER NUMBER		
2617				
MAIL DATE		DELIVERY MODE		
07/08/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/597,866

**Applicant(s)**

MIKLOS ET AL.

**Examiner**

KUO WOO

**Art Unit**

2617

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 25-48.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Lester Kincaid/  
Supervisory Patent Examiner, Art Unit 2617

/KUO WOO/  
Examiner, Art Unit 2617

Continuation of 11, does NOT place the application in condition for allowance because:

1.) Regarding Incomplete Office Action (Page 7 of 12)

All claims rejections were covered and first office actions are maintained with same reasons for rejections. Final office action merely expressed additional arguments which response to the claims listed in remarks/arguments. Remarks are not persuasive and all claims rejected from first office action are remain effective.

2.) Regarding Claim rejections (Page 7 of 12):

Cheng discloses every limitation 25, 33 and 44 those claims are anticipated by Cheng.

Regarding Cheng fails to teach that combination of function (Page 8 of 12):

[As described at page 4, Line 21, et seq., (In specification) the principal idea of the present invention is to let the mobile station MS control the uplink selection combining instead of having a combiner node in the network. (In claim 25, 4th, limitation) "Selecting, by said mobile station, only one base station from active set of base stations based upon said quality measurement"]. Applicant argues language that isn't clearly present in the claims that does not imply combine the best signal by mobile station and just select one of signal as Cheng invention. Cheng teaches selection from cell a or b, (¶10, Selection of cells by the mobile station may be in accordance with 3GPP or 3GPP2.) based on quality measurement instead of combine signals.

As first office action indicated, claims 25 and 33 are anticipated by Cheng and Claim 44 is anticipated by Schramm.

Applicant argues "the applicants' invention provided functionality that allows a mobile station to select which of a plurality of receiving base stations will forward received packets to the fixed portion of the network" (Page 9 of 12)"

Cheng discloses the function of base station (¶17, the base station (fixed portion of network) controller (BSC) uses a radio link protocol, The BSC is connected to a packet data serving node PDSN), wherein selected base station (cell b) is connected to PDSN (fixed link from base station). As examiner indicated above paragraph, the claim 25 does not indicate combiner in the fixed portion of network and claim recites (from selected radio base station) which agrees with Cheng's teaching.

3.) Regarding "confirms that a handoff is made before the mobile station switches its transmission from first cell (A) to the second cell (B)" (Page 10 of 12).

Cheng discloses (¶107, the present invention uses cell selection to replace reverse link soft handoff. With the H-ARQ improvement, soft handoff on the reverse link wastes air resources especially when the reverse data rate is much higher for 1.times.EV-DV (around 614 kbps). In addition to 1.times.EV-DV's quick resumption of data transfer, the invention's use of H-ARQ and cell selection in the reverse link provides the benefits of reducing channel element usage and the Abis interface overhead in comparison with the traditional soft-handoff. Cheng states disadvantage convention handoff in paragraph 0006, and provides solution in following paragraph which cell selection in the reverse links provides the benefits as purpose of Applicant's invention. Therefore claims 33 and 44 are anticipated by Cheng.

Regarding Claim Rejection -35 U.S.C. § 103(a) (page 10 of 12).

Examiner agrees the applicant statement (In dark) to consistent with the first office action. The reasons of rejections are remaining stand.

- Claims 34 and 35 are unpatentable over Cheng in view of Virtanen.
- Claims 46 and 47 are unpatentable over Schramm in view of Haas.
- Claim 48 is unpatentable over Schramm in view of Kondo.

4.) Examiner summary"

Applicant main argument has been sufficiently expalined. Examiner position remains unchanged.